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HOUSE BILL 397

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Joseph Cervantes

AN ACT

RELATING TO PUBLIC HEALTH; PROVIDING FOR COURT-ORDERED
TREATMENT OR ISOLATION UNTIL COMPLETION OF THERAPY FOR PERSONS
DEEMED TO POSE A RISK OF TUBERCULOSIS TRANSMISSION TO MEMBERS
OF THE PUBLIC, RELAPSE OR DEVELOPMENT OF THERAPY-RESISTANCE;
ENACTING A SECTION OF THE PUBLIC HEALTH ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Public Health Act is
enacted to read:

"NEW MATERIAL] PROTOCOL FOR MANAGEMENT OF INFECTIOUS
FORMS OF TUBERCULOSIS.--

A. When a physician or other person knows that a
person has an infectious form of tuberculosis, the physician or
other person shall promptly notify the department.

B. Upon receiving notification that a person has an

1 infectious form of tuberculosis, the department shall prescribe
2 the person a treatment plan meeting the department's
3 therapeutic specifications for the infectious form of
4 tuberculosis.

5 C. When the department has knowledge that a person
6 who has an infectious form of tuberculosis has failed to comply
7 with the department's treatment plan as described in Subsection
8 B of this section, the department shall petition the court for
9 an order of protection for the person who has an infectious
10 form of tuberculosis to comply with whichever of the following
11 courses of action the department deems appropriate:

- 12 (1) a program of directly observed therapy;
- 13 (2) isolation; or
- 14 (3) directly observed therapy and isolation.

15 D. The petition for an order of protection shall be
16 made under oath or shall be accompanied by a sworn affidavit
17 setting out specific facts showing that the person has an
18 infectious form of tuberculosis.

19 E. The petition for an order of protection shall
20 state that the person for whom the order is sought:

21 (1) has an infectious form of tuberculosis or
22 presents a substantial likelihood of having an infectious form
23 of tuberculosis based on credible medical evidence;

24 (2) after being advised of the condition and
25 the risks posed thereby, has failed to comply with the

1 department's treatment plan; and

2 (3) poses a substantial likelihood of
3 transmission of tuberculosis to others because the person is
4 actively infectious or poses a risk of relapse or development
5 of a therapy-resistant strain of tuberculosis.

6 F. Upon the filing of a petition for an order of
7 protection, the court shall:

8 (1) in cases where there is probable cause
9 from the specific facts or by the petition to give the judge
10 reason to believe that the person who has been alleged to have
11 an infectious form of tuberculosis poses a substantial threat
12 to the public health and safety because the person is actively
13 infectious, or poses a risk of relapse or development of a
14 therapy-resistant strain of tuberculosis, immediately grant ex
15 parte a temporary order of protection to:

16 (a) isolate the person and administer a
17 program of directly observed therapy; or

18 (b) isolate the person, if the person
19 refuses a program of directly observed therapy;

20 (2) cause the temporary order of protection,
21 notice of hearing and an advisement of the terms of the order
22 of protection, including the rights of the person alleged to
23 have an infectious form of tuberculosis to representation and
24 re-petition for termination of an order of protection, to be
25 immediately served on the person alleged to have an infectious

1 form of tuberculosis; and

2 (3) within five days after the granting of the
3 temporary order of protection, hold an evidentiary hearing to
4 determine if the court shall continue the order of protection.

5 G. A person held pursuant to a temporary order of
6 protection as set forth in Subsection F of this section shall
7 be:

8 (1) entitled to representation by counsel at
9 the evidentiary hearing and at all hearings thereafter for the
10 duration of the period of isolation or program of directly
11 observed therapy; and

12 (2) permitted to communicate on any matter,
13 including the person's isolation or program of directly
14 observed therapy, with persons by telephone or other reasonably
15 available means that do not expose other persons to the risk of
16 infection, for the duration of the period of isolation or
17 program of directly observed therapy.

18 H. Counsel may be retained by the person under the
19 temporary order of protection or shall be appointed by the
20 court if the court determines that the person held cannot
21 afford legal representation or if the court determines that
22 appointment of counsel is required in the interest of justice.

23 I. At the evidentiary hearing, the court shall
24 review the circumstances surrounding the temporary order, and,
25 if the petitioner can show by clear and convincing evidence

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1 that the person being held has not complied or will not comply
2 with appropriate treatment and contagion precautions as the
3 department deems necessary, the court shall continue the order
4 of protection for the person who has an infectious form of
5 tuberculosis until completion of therapy, as deemed by the
6 department. The court shall order regular review of the order
7 by providing the person under an order of protection with a
8 subsequent hearing within ninety days of the temporary order's
9 issuance and every ninety days thereafter. The order of
10 protection shall be terminated and the person shall be released
11 if:

12 (1) at a hearing, the petitioner has not met
13 its burden of showing by clear and convincing proof that the
14 person under an order of protection has not completed therapy;
15 or

16 (2) exceptional circumstances exist warranting
17 the termination of the temporary order of protection.

18 J. The provisions of this section do not permit the
19 forcible administration of medications.

20 K. The proceedings of any hearing held pursuant to
21 the section shall be recorded stenographically, electronically
22 or mechanically or by other appropriate means. The proceedings
23 shall be closed to the general public and the records shall be
24 sealed from public inspection.

25 L. A person who in good faith reports that another

underscored material = new
[bracketed material] = delete

1 person has an infectious form of tuberculosis shall not be held
2 liable for civil damages as a result of the report; provided
3 that the person reported as having an infectious form of
4 tuberculosis shall have the right to sue for damages sustained
5 as a result of negligent or intentional reporting of inaccurate
6 information or the disclosure of information to an unauthorized
7 person.

8 M. For purposes of this section:

9 (1) "completion of therapy" means completion
10 of the prescribed therapy, as determined by the department
11 based upon published national consensus tuberculosis treatment
12 guidelines;

13 (2) "court" means the district court of the
14 judicial district where the person who is alleged to have an
15 infectious form of tuberculosis resides or is found;

16 (3) "department" means the department of
17 health or a person designated by the secretary of health to
18 carry out the duties provided in this section;

19 (4) "directly observed therapy" means a
20 methodology for promoting patient adherence in which a health
21 care provider or trained designee witnesses the patient ingest
22 each dose of medication until the completion of prescribed
23 therapy for tuberculosis; and

24 (5) "infectious form of tuberculosis" means
25 a form of tuberculosis disease that has been determined,

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~~[bracketed material] = delete~~

1 through whichever diagnostic procedures the department deems
2 appropriate, to be in a communicable or infectious state
3 because the patient is capable of expelling tubercle bacilli
4 into the air."

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